DOCUMENT RESUME

ED 351 931 HE 025 992

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TITLE Teaching Law Through Distance: The Sri Lankan Experience.
PUB DATE 15 Sep 92
NOTE 11p.
PUB TYPE Reports - Descriptive (141)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Curriculum Design; *Distance Education; Educational History; Evaluation Methods; External Degree Programs; Foreign Countries; Higher Education; *Law Schools; *Law Students; *Legal Education (Professions); Open Universities; Program Design; Teaching Methods
IDENTIFIERS *Distance Education Centers; *Sri Lanka

ABSTRACT

This paper describes distance legal education as conducted by the Open University of Sri Lanka. The paper opens with a description of legal education in Sri Lanka which began in the period of British colonial rule. Also described are more recent efforts to make legal education available to a larger segment of the population culminating in the degree program in law at the Open University which was established along with a continuing legal education program and legal literacy programs for the general public. The content of the 4-year degree program is described noting its use of a broad based and comparative approach towards the subject matter. A section on the teaching method utilized considers a schedule of 20 hours of face-to-face teaching and discussion for each course, course materials, and audio cassettes of lectures on various topics. Also described are the evaluation methods of continuous assessment based on a take home assignment, an open book exam during the middle of the year, and a final closed book exam. Practical training in a legal aid and a mediation project are also covered. Concluding sections offer reflection on problems and perspectives. An appendix lists the courses for each of the four years of study. (JB)

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HISTORY OF LAW TEACHING IN SRI LANKA

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HISTORY OF LAW TEACHING IN SRI LANKA

Legal education in Sri Lanka began in the period of British colonial rule and arose out of the need to produce lawyers who could appear in the courts established by the British. The method employed to train such students of law was by apprenticing them to a senior professional lawyer, as was the common practice in England. The British recognised the dichotomy of advocates and proctors, and this division which was also recognised in Sri Lanka (or Ceylon as it was then called), is reflected in the early system of education. Thus, in the case of students who desired to qualify as proctors, senior Proctors acted as the "Master" for a term of apprenticeship, and those who desired to qualify as advocates spent a shorter period of time with a senior advocate.[1] Having obtained a certificate of eligibility from his Master, a students could sit for a qualifying examination which was set under the direction of the Supreme Court.

This situation prevailed throughout the nineteenth century and the early twentieth century, where the emphasis was on legal education for the practice of law.[2] In 1911 a new development took place with the establishment of the Ceylon Law College This development however, did not change the professionally oriented basis of legal education and the responsibility for such education remained with the Council of Legal Education (which was established in 1874), judges and lawyers. The Council was moreover reluctant to relinquish its control over legal education by allowing other institutions to take over the responsibility of training lawyers.

Notwithstanding this position of the Council, in 1947 the Arts Faculty of the University of Ceylon offered for the first time a degree course in law. This course was seen as a preliminary step towards entering the legal profession and not as a separate course of legal education.[3] The University law course was to a great extent a duplicate of that conducted by the Law College, although its approach has been always considered to be more "academic" in comparison to the "professional" approach taken by the latter. The Council's recognition of the course has manifested itself in the fact that the law graduates of the University have been granted exemption from many of the subjects included in the Law College course, when obtaining their professional qualification.

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[1] See, Prof. G L Pieris and Prof. Savitri Goonesekere, *Legal Education in Sri Lanka*, Paper presented at the South Asian Law Deans Conference, 15 - 18 March 1989, Colombo, Sri Lanka.

[2] Ibid.

[3] Id at 4.

HE025 992

The existence of two separate institutions to train prospective lawyers did not however satisfy the demand for legal education. Neither the Law College nor the Law Faculty of the University could accommodate the numbers of students intent on pursuing a career in law. Many of these students, unable to enter either of these two institutions, turned to the external degree course in law offered by the University of London. This entailed a rigorous programme of self study at the end of which the students would sit the examination of the University together with the internal students.

In spite of the policy of free education which was implemented in the early 1930s, legal education and a career in law was hitherto almost entirely the privilege of the English educated and English speaking, westernised elite which naturally constituted a minuscule segment of the population. One reason for this was that at least a working knowledge of English was essential to follow a programme of study which required reading of law reports of English, South African and other jurisdictions as well as text books and journal articles written in English. Therefore, the courses of the University as well as the Law College were conducted entirely in English. However, in the early 1970s the government of the time, anxious to pursue an egalitarian policy of making legal education open to all segments of the student population, stipulated that from that time onwards the LL.B programme should be conducted in Sinhala and Tamil as well as in English.

This new development naturally meant that a career in law was now open to an even greater segment of the student population. However, the intake of the University could not be increased and in order to meet the rising demand for facilities to study law, the University initiated its own external degree programme whereby external students could obtain the law degree by merely sitting the examinations of the University. It has been stated that "[t]he responsibility of making legal education accessible to a large number of students was initially placed on the University Law Faculty. The opportunity provided by the Law Faculty for obtaining an external law degree succeeded in democratising legal education in the sense of expanding the opportunity for obtaining it."[4]

The establishment of the Open University in 1980 was initially viewed as a strategy for relieving the Law Faculty of the responsibility of providing extension courses in law to a large body of external students. This was why the Open University was persuaded to commence its law programme with a degree rather than a diploma/certificate course. The university was also established with the stated aim of further democratising university education and making it accessible to a greater segment of the population. In particular, the new University hoped to offer an opportunity of obtaining a tertiary education to those who had been unable to do so at the period of their

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[4] Id at 7.

lives when they would have been normally able to devote their full attention to doing so.

The Law Faculty of the University of Colombo being anxious to relinquish the burden of administering the external degree course, a decision was made to initiate a degree programme in law at the Open University. The Open University of Sri Lanka is one of the few of such universities to have taken on the challenge of conducting such a programme. It has however, not limited itself to a degree course, but has also taken the initiative to conduct continuing education courses in law as well as legal literacy programmes to educate the general public on basic legal issues. This threefold programme will now be discussed in turn.

THE LAW DEGREE PROGRAMME OF THE OPEN UNIVERSITY

(a) Course content

The degree programme of the Open University, like that of the Faculty of Law of the University of Colombo, is of four years duration. The course content taught in both universities is somewhat similar. However, since the Open University law programme was initiated just over ten years ago it has not been constricted by adherence to conventional ideas of what a degree course in law should contain. Thus those formulating it were able to revamp both the focus and the structure of many of its courses to suit the changing legal climate of the country. It has, for instance, rejected the traditional Roman-Dutch law focus on legal issues and adopted a more broad based and comparative approach towards the subject matter. In order to give students an exposure towards other legal jurisdictions which have not been traditionally noticed, many of the subjects entail a discussion of current legal problems as dealt with in countries such as the United States, India and other Commonwealth countries.

The Open University has also introduced a new subject called "Legal Method" into the first year curriculum. This has been necessitated by the fact than in the distance education system of teaching, students have less contact hours with lecturers. Therefore there is less opportunity for teachers to impart necessary teaching skills such as reading and analysing cases, understanding legal principles, legal writing and analysis of legal problems. Although students would normally grasp such skills in the course of studying the various subjects, in the limited time allowed to them in the distance education method of teaching this is not possible. The solution was felt to be an entirely new course which would be used to teach these skills to the students. It should be noted however, that many conventional universities too offer "Legal Method" as a separate course because it is felt to be an essential prerequisite to acquiring legal skills.

As far as general course content goes, the Open University has maintained an awareness of the current legal issues which have

been arising in recent times. We have taken an inter-disciplinary approach to many of our subjects in order that students could view the law in context and not as an abstract intellectual exercise. For instance, while we hope to introduce a separate course in Environmental Law in the near future, we have already begun to give an environmental focus to such courses as Land Law and the Law of Delicts. The Environmental Law course is intended to be a catalyst in this regard for it will contain a discussion of law against a background of such diverse issues as land use, forests, pollution, water bodies and economics. We intend to invite experts from several disciplines to conduct classes on these various aspects.

(b) Teaching methods

It has been found impossible to teach law without any face to face contact whatsoever between teacher and student. The discipline of law by its very nature involves dialogue and discussion of legal principles and their application to specific issues The importance of the interaction between teacher and students as well as that among students themselves cannot be ignored. This can be seen from the fact that most students form themselves into and engage in "joint study" whereby they are able to discuss and analyse legal issues among themselves. Thus it is generally agreed that teaching law out of text books alone would prevent students from developing a vital aspect of legal skills.

Under the circumstances it has been found that the law programme cannot be implemented by strict adherence to methods of distance education and the concepts have to be modified to a certain extent. Since the nature of the Open University prevents us from giving the students as many classes as a conventional university, we have compromised by giving them twenty hours of face to face teaching for each course. Although these classes are still popularly referred to as "lectures" by students and teachers alike in the time honoured tradition, they are not intended to be utilised in this fashion.

All students are supplied with comprehensive course materials for each course. These take the form of "blocks" of materials, usually three for each course. In addition, the students are given audio cassettes which contain a recorded discussion of particularly topical aspects of the law. The Law Division has produced videos of current legal topics which are made available to the students. They are also supplied throughout the year with "handouts" which contain updated material of current developments which have taken place. A comprehensive reading list identifies the text books, case law, journal articles and any other relevant material which they are expected to read and become familiar with.

A programme of study is formulated in order that the students would know which topics would be discussed in class on a particular date. Since it is too great a strain for students to

follow classes continuously throughout one day, these classes have to scheduled at suitable intervals. They are expected to have read all the materials pertaining to that particular topic and be prepared to take part in a discussion of the legal and other issues contained in it. Thus the "lecture" is not intended to be a monologue on the law by the "lecturer". Rather the students are expected to raise questions for clarification as well as to engage in an analysis and discussion of the material. Thus the teaching methods used in the Open University are more akin to the Socratic method of the American law schools rather than to the lecture method of the British tradition.

It may be asked to what extent this method works in reality. It should first be pointed out that this method of teaching is a novel one and unfamiliar to students who, from their schooldays are accustomed to absorbing information generated by their teachers and cramming it for the examinations. The majority of students join the universities confidently expecting that the same method will be followed in these institutions as well. Indeed, for years this method of teaching has been used in the Law Faculty as well as the Law College where in addition, lecture notes are dictated to students. Therefore many students receive a rude shock on learning that this method will not be followed in the Open University. Therefore since Sri Lankan students tend to be "dependent learners" even the limited number of classes given to them helps to increase their confidence.

It has been found that there is generally a core unit of students in every class who read their course materials beforehand as well as the other related materials and come to the classroom prepared to discuss and analyse what they have read. This body of students consists of those who by diligence and hard work make their way to the end of the programme and graduation. The majority of the class however, either do not or are unable to follow this system of learning, do not come prepared to class and take little or no part in the discussion. However, over the years since the law programme was begun, there has been a gradual acceptance of the teaching methods employed by this institution, and more participation by the students in the process.

(c) Evaluation

The Open University has also broken with traditions of legal education as far as examinations are concerned. In the Law Faculty as well as the Law College, students sit for an examination on each subject at the end of each academic year. The Law Department at the Open University, has however, initiated a system of continuous assessment in keeping with the system used in the other departments of the University.

According to this system s student's final grade is based on three different sets of marks - namely, (a) a take home assignment which is handed out at the beginning of the academic year; (b) an open book test which is conducted midway during the course; and (c) a final closed book examination. The final percentage of marks are calculated on the basis of 15% from the

take home assignment, 15% from the open book test and 70% from the final examination. In order to be eligible to sit for the final examination, a student must obtain a 40% average on the first two tests.

This system of evaluation has received a mixed reception from students. They generally do not object to the take home assignment since this gives them an opportunity to spend time and effort on it and obtain the maximum marks possible. However, it has been found that many students are intimidated by the concept of the open book examination and the nature of the questions it contains. This examination seeks to test not the capacity to memorise but the analytical skills of the examinees. Therefore they are permitted to bring their course books into the examination hall so that they could concentrate their attention on the problem before them without the need to delve into their memories for the necessary facts.

The students however, view this type of examination with suspicion. From their schooldays the majority are accustomed to cramming notes provided by the teachers and reproducing them at the examinations. This method has also generally been followed in the Humanities faculties of the universities. The unfortunate result of this system is that analytical skills are never developed to their full potential and especially in a discipline such as law, this constitutes a serious deficiency. The hostility which students have demonstrated to this unfamiliar and threatening examination system is especially so with regard to students in the first and second years, although those who have progressed to the higher levels appear to handle such examinations more competently.[5]

The Open University has also identified as a serious deficiency among law students in general, the fact that most of them have largely underdeveloped writing and research skills. In order to remedy this situation, the final year Jurisprudence course involves presentation of a research paper in lieu of the take home assignment. In order to prepare this paper, a student must work throughout the year with a senior lawyer on a chosen case, identify the issues involved in it as well as analyse the applicable legal principles and write a comprehensive paper documenting his experiences.

This project has, perhaps surprisingly, met with an enthusiastic response from most of the student body. Last year, when it was carried out for the first time, the faculty of the Law Division were presented with many well researched and well documented research papers. A perusal of several of the papers revealed that the students had been able to view for themselves the way in which the law works in reality and the papers contained both

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[5] Yet another innovation which has met with opposition from students is the fact that they are required to obtain eligibility to sit the final examination on the basis of their performance in the first two assignments.

criticisms of the existing legal system and suggestions for changes. Since one of the aims of this exercise was in fact to give the students such an exposure, it has proved to be successful in many ways.

(d) Practical training

The Legal Aid and Mediation Project which has recently been started by the Division is also intended to enable students to gain exposure to the law in reality. The Project will offer free legal aid and services to disadvantaged members of the public and in the process of carrying out a social service will enable students to get their first taste of a legal practice. The services of students will be availed of as far as possible and they will be encouraged to work together with the lawyers who will be handling the actual litigation, if any. However, the program hopes to avoid litigation as far as possible and focus on alternative methods of dispute resolution as far as possible, thus exposing the students too to such concepts.

(e) Problems and perspectives

The Open University Law programme is less than ten years old and the first batch of students graduated in December 1990. While it has got over most of its teething problems there are many questions still to be answered and many other problems which continue t surface.

One of the major problems faced by the Law Department is the size of the student population. The Law Department is one of the smallest in the university in terms of permanent staff, containing at present one professor of law, one senior lecturer, one lecturer and five education assistants. Therefore the majority of classes are conducted by visiting staff who are professional lawyers. Competent Visiting lecturers are not easy to find since they are expected to reach the high standard required in a University.

One of the other major problems is that of finding reliable marking examiners to handle the continuous output of assignments generated by the system throughout the year. Thus although it is one of the stated aims of the Open University that a university education will be made available to all those who desire it, it is not as yet practically possible for the Division to service every student who applies to join the law programme.

The lack of other facilities such as library facilities also compounds the problem to a greater extent. Since the students are not given the number of hours of face to face teaching which is normally available to students, they are compelled to resort to self study to a large extent. If the necessary library facilities are not available this is often an impossible task. However, this appears to be a problem which the university will not be able to solve in the near future since it is caused by the lack of financial resources.

This problem is related to another which the university is striving to overcome namely, the inability to read, write or comprehend English by the majority of students. Since most of the recommended reading materials which they are required to read are in English, the deficiency constitutes a serious drawback and is the direct result of many of them to fail to complete the course. While a credit pass in English at the G.C.E. Ordinary Level examination is a prerequisite for entrance to the Faculty and the Law College, the Open University with its policy of university education for all is precluded from imposing such a condition. In order to overcome this shortcoming a supplementary course in English for Legal Studies has been made compulsory for all those who are unable to pass a preliminary English language test and it has found that it largely succeeds in improving the standard of English among the students.

CONCLUSION

Legal education in all three institutions of higher learning in Sri Lanka face serious problems and shortcomings. Many of the accepted systems and concepts need to be re-evaluated and revamped in order to better suit and legal and social climate of today. The Open University being the youngest of these three institutions has the opportunity of learning from the mistakes and experiences of the others and while incorporating the beneficial aspects, evolving others to impart to its students a meaningful and comprehensive knowledge of the law with a corresponding faith in its efficacy.

Annexure "A"

First Year (Level 3)

Introduction to the
Laws of Sri Lanka
Constiutional Law
Legal Method

Second Year (Level 4)

Criminal Law
Family Law
Law of Contracts

Third Year (Level 5)

Land Law
Law of Delict
Law of Trusts and Equity

Fourth Year (Level 6)

International Law
Jurisprudence
Mercantile Law
Labour Law

* In addition to these courses which are currently being taught, the Law Division hopes to introduce courses in Environmental Law and Company Law within the next two years.